Supreme Court, U.S.
FILED

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No. 95 1140 NOV 13 1995

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**IN THE
SUPREME COURT
OF THE UNITED STATES**

October Term, 1995

SHIN CHONG YONG

Petitioner

v.

GANNETT OUTDOOR CO., INC. OF SOUTHERN CALIFORNIA, LOCAL UNION NUMBER 831, PICTORIAL PAINTERS, DISPLAY AND DECORATORS I.B.P.A.T. -AFL-CIO DOES 1-5

Respondents

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

SHIN CHONG YONG
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IN PROPRIA PERSONA

69 pp

QUESTION PRESENTED FOR REVIEW

1) Whether Rule 56 (c), USCA, of the Federal Rules of Civil Procedure and 26 (b) (1) (a) (ii) USCA of the Federal Rules of Civil Procedure and Rule 56 (e) of the Federal Rules of Civil Procedure for summary judgment, become violated where depositions, answers to interrogatories, and admissions on file together with affidavits where taken; when only specifically selected individuals where purposely deposed to favor the Defendants and no real key witness's where deposed in favor of the Plaintiff.

2) Whether this inadequate discovery along with gross negligence and incompetence of Plaintiff's counsel, including a period of complete absence of any counsel violates Amendments V, VII, XIV to the Constitution of the United States of America - the right for due process of law, trial by jury and adequate representation.

3) Whether preferential treatment was used to favor retained individuals in employment, over another out of the favored group in violation of the 1964 Civil Rights Act.

PARTIES TO THE PROCEEDING

Plaintiff-Petitioner:

CHIN CHONG YONG,

Defendants-Respondents:

GANNETT OUTDOOR CO., INC. OF SOUTHERN CALIFORNIA, LOCAL UNION NUMBER 831, SIGN, SCENE, PICTORIAL PAINTERS, DISPLAY AND DECORATOR I. B. A.T. - AFL-CIO, DOES 1-5

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THE PLAINTIFF, AND OR INDIVIDUAL CANNOT BE DENIED FULL AND COMPLETE LEGAL REPRESENTATION IN ACCORDANCE TO THE LAWS OF THE LAND, WHETHER THEY BE CIVIL OR CRIMINAL IN NATURE, AND THAT THE CODES OF CIVIL PROCEDURE AND THE AMENDMENTS TO THE UNITED STATES CONSTITUTION ARE WRITTEN FOR ALL AND NOT FOR A SELECT PARTY TO THEIR SUPREME ADVANTAGE, BUT ALSO FOR THE INDIVIDUAL WHO THROUGH NO FAULT OF HIS OWN WAS DENIED FULL AND PROPER REPRESENTATION BY COUNSEL, EITHER BY MONETARY DEFICIENCY OR BY A SEQUENCE OF EVENTS UNCONTROLLED BY THE INDIVIDUAL, AND THAT RACIAL PREFERENCES VIOLATE THE CIVIL RIGHT ACT OF 1964.....12

SUMMARY OF FACTS

I. The fact is that Mr. Shin Chong Yong through circumstances beyond his control was denied proper legal counsel in terms of his complete representation in this case.

II. The EEOC maintains a backlog of 100,000 cases, this fact may justify why the EEOC of Los Angeles, California could tend to discourage potential cases.....4

A. Shin, accompanied by co-worker Scalese obtains evidence that he attempted to file a claim on October the 8th of 1991 well in advance of the time limit.....6

B. At that meeting Shin was intentionally discouraged to forfeit his claim, based upon advice by the EEOC representative at that time. No investigation of the case was ever attempted; case concluded on a 15 minute interview.....6

C. Shin was entitled to 100% representation with an investigation of the facts in his case. Shin's counsel was grossly negligent in his responsibility in terms of communicating with the EEOC to justify the issues presented.....8

D. Addendum A of proposed contract, gave rights of immunity to lay-off to a select group, Local Union 831 fraudulently allowed that group to vote for the contract. This caused the rights of others to be jeopardized who were not in the protected group.....7-9

SUMMARY OF FACTS CONTINUED

III. The most important key witness's in this case were not deposed, in terms of numbers of key witness's deposed to favor Mr. Shins case we arrive at zero.....5.

IV. The Supervisor Toni Lopez discreetly informed specific individuals that they would not be the employee's to be laid-off, this occurred after the department employees voted down the contract designed to terminate people out of seniority. The fact is that any employee with 35 years of seniority would not want to lose it; much seniority was at stake here for most employees. .....2.

A. Fraud was committed by the Gannett management to win the contract to terminate people out of seniority. The Union Local 831 was negligent in its representation in terms of thoroughly researching the actual facts in existence at the time.....2.

B. The Good Ole Boy's Club consisted mainly Mexican people, including supervisors. The Gannett Company was preferential in that most employees were such. A subsidiary company dealing with bus shelters, was all Mexican. A Gannett Subcontractor employed 99% Mexican Of the nine laid-off only one was Mexican. 2 Mexican workers of less experience and skill were retained over Mr. Shin.....2.

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REFERENCE TO REPORT OF OPINION

There is no published opinion, official or unofficial, delivered in this case. The judgment and memorandum of the Ninth Circuit Court of Appeals are included in the Appendix at Tab A. The Order Granting Summary Judgment and the Judgment of the District Court are included on the Appendix at Tab B.

GROUNDS FOR JURISDICTION

The judgment to be reviewed in this action was entered by the Ninth Circuit Court of Appeals on August 15, 1995. (The Judgment and Memorandum are included in the Appendix at Tab A.) The Order Granting Summary Judgment and the Judgment of the District Court are included in the Appendix at Tab B.

This Honorable Court has Jurisdiction to review the Judgment by writ of certiorari under 28 U.S.C. § 1254.

This Honorable Court has granted a 60 day extension of time as of November the 16 , 1995.

STATEMENT OF THE CASE

In 1985 Gannett Outdoor Advertising of Southern California completed construction of a new billboard plant for hand painted billboards. The plant proved to be inefficient in that it was unable to meet the demands of the painters as they finished each billboard; this caused by the constant breakdown of machinery. The company claimed it was unable to compete with the new technology of computer "painted" billboards. Patrick Outdoor Advertising a competitor, was negotiating a new contract specifying a lay-off of ten people, both companies were under the same Local Union 831 contract which contained a "Most Favored Nations Clause." Employees of the Gannett paint studio requested a statement as to the possibility of layoffs A meeting was held in the presence of paint studio employees by the CEO John Martin were he emphatically stated that no-one would be laid-off. Ten people were slated for lay-off by the newly negotiated contract and a vote was taken to lay people off "out of seniority." The contract was defeated by a few votes, people did not want to lose their seniority. Prior to the second vote, the paint studio supervisor discreetly informed selected individuals of the "Good Ole Boys Club" (mostly mexican) that they would not be laid-off. On the second vote the contract was ratified by a few votes and one female and 8 males were laid-off. 3 were ex-shop stewards, one participated in the contract negotiations, only one was mexican and a total of 5 filed

STATEMENT OF THE CASE CONTINUED

wrongful termination suits, resulting in these proceedings.

The genuine issue of material fact as required by Rule (56) summary judgment, could not be realized because the defendants covered the real evidence and material facts by false statements as verified by all plaintiffs in the readings of depositions, and declarations. These false statements could not be disputed unless a trial was granted, First National Bank of Arizona v. Cities Service Co. 391 US 253, 20 Led. 2d 569, 88 S. Ct. 1575. Gannett opportuned to "get there first with the most questions asked," most importantly the concrete weight of real evidence could only be factually supported by the deposition of key witnesses; there was no full discovery for the plaintiffs. For this reason the plaintiff had no ample opportunity to full disclosure of all the facts, Garret v. City & County of San Francisco. 8 Fed. Rules of Serv. 3d 352, 818 F2d 1515 (CA 1987) due to a 3 time change of attorneys plaintiff afforded little time for essential discovery. Discovery that was completed by plaintiffs attorneys was with grossly inadequate consultation of the plaintiff, extending to not informing plaintiff of the date for depositions. Gross negligence reappeared with inappropriate questions asked at deposition, caused by lack of communication with Shin. Key witnesses not deposed where, the CEO of the plant, plant supervisor, supervisors secretary, manager in charge of contract negotiations, shop steward, 3 ex-shop stewards,

STATEMENT OF THE CASE CONTINUED

who held critically damaging testimony in opposition to the defendants. At least 6 other artists not part of the "Good Ole Boys Club" could render just testimony of actual evidence. Favoritism was witnessed by Shin, when a co-worker Xavier Montez said, he would try to influence Lopez, the supervisor to exclude Shin in lay-off, Montez was retained as part of the "Club." The non-moving party must show facts and evidence that there exists a genuine issue for trial, this could only be exercised deposing key witnesses in this case, black Panther Party v. Smith 661 F2d 1243 (1981) A party moving for summary judgment bears the burden of showing the absence of any genuine issue of fact and that there is no question as to the credibility of it's evidentiary material, where there is the slightest doubt as to the facts the motion for summary judgment should be denied. The 9th Circuit Court had no consideration for the slightest doubt, to favor the plaintiff. Under Rule 56 (c) inferences from underlying facts contained in depositions, affidavits must be viewed in light favorable to those opposing the motion for summary judgment States v. Diebold Inc. 369 US 654, 8 Led 2d 176, (1) 82 S. Ct. 993. This was not evident when the 9th Circuit Court took the absolute word of the defendants employees declarations(memorandum P.5) Appen. A. Under the extreme stress of lay-off these people were forced to favor the defendants in order to retain their employment, the

STATEMENT OF THE CASE CONTINUED

end results were precisely that, they were given continuing work opportunities with the defendants while others were terminated. The 9th. Circuit Court stated that the declarations of 2 ex-shop stewards with years of experience with grievances, one of which was selected by popular demand as workplace art director; here the 9th Circuit Court States that "reasonable persons can differ when assessing artistic ability or disruptive behavior. The 9th Circuit Court openly discriminates against parties who held the most experience, in terms of rectifying on the job skill, ability and grievances. The Declarations to favor the plaintiff should have carried more weight, when adding the years of work experience; as shop stewards their knowledge should have carried heavier weight in the declarations. Rule 56(c) requires to review the entire record, the entire record did not exist because the key witnesses where not deposed, UAI Technology, Inc., Valuteck Inc. 123 F.R.D. 188 MDNC (1988). Had they been deposed suspected fraud and deceit could have been alleged to prove genuine issues of fact, as it did with Smith v Shaver Stores Co., 4 Fed. Rules of Serv. (2d 133 L Ed Pa. 1961) In action on fraud and deceit there are genuine issues of fact-summary judgment denied. Gannet had already committed misrepresentation with the fraudulent settlement of co-plaintiff Tony Scalese, where Gannett was judged guilty by the Central District Court of L. A. Calif.; case remanded to Central District

STATEMENT OF THE CASE CONTINUED

for hearing concluding in the re-instatement of plaintiffs case against Local Union 831. The issues herein were not brought to light because no full discovery took place for Shin, for reason that his counsel was considered incompetent by both defendants and plaintiffs, Wilcoxon v. Aldredge (1941) 192 Ga. 634, 15 SE 2d 873, 146 ALR 365, where attorneys are negligent and incompetent and where representation was lost created violation of the 5th Amendment to the Constitution. In Edwards v. United States 256 F2d 707 and Arthur Bruce v. United States of America., 379 F2d 113 (1967) 114 (1.) where gross incompetence blotted out essence of substantial defense created a violation of the 7th Amendment to the Constitution. In June of 1992, 289 days prior to the deadline to file a complaint with the EEOC of L. A. Calif. Shin filed a complaint at that office. Shin had no control over the competence or organization of the employees staffed at that office. Shin negotiated with his attorney in reference to the complaint at the EEOC, instead of exercising his responsibility with his client in terms of solving the problems related to Shins case, counsel did not effectively communicate and was unusually unavailable. The EEOC told Shin that there was no need to file because he hired an attorney, here is were Shins counsel did not get back with the EEOC to clarify the matter. Furthermore, on October 8, 1991 Shin and Scalese attempted to file a claim at the EEOC the officer-

STATEMENT OF THE CASE CONTINUED

answering the claim stated because Gannett did retain older workers they had no case, this done with no officer to investigate the actual facts of each case. Shin was laid-off according to Addendum A of the new local 831 contract, creating an exclusive class: those 55 years and older, and those with 30 years service, and those with better skills were immune to lay-off. Shins lay-off dealt with Addendum A, not only age discrimination with this Shins counsel lost direction with incompetent representation. Gannett admitted it kept no employee work records and claimed any they did have were stolen. Shin was the only outside pictorial artist he painted billboards up to 100 feet in height on scaffolds for 17 years, he trained those in his crew. Outside billboard painting requires special training which inside artists did not have nor did they want to work at extreme heights. Others in the outside crew were not pictorial artists. A pictorial artist title means higher skill and ability, and more money per hour. Those retained in lay-off of the outside crew were members of the "Good Ole Boys Club"with little experience,skill, paid less, and of mexican decent. Due to the gross negligence and incompetence, counsel failed to properly address these issues causing the 9th Circuit to overlook the factor of Addendum A. Include the fact that Shins counsel was the direct law office neighbor of the Gannett attorneys, frequenting the same mall lunch areas. To include-

STATEMENT OF THE CASE CONTINUED

with Mr. Wiess as plaintiffs attorney, plaintiffs attached another attorney Mr. Edward Smilow who stalled and stretched the case for every extra day he could. Smilow had a serious heart problem and he did not inform his clients or defendants of the critical condition until very late. Shin and other plaintiffs were deprived of full and quality representation and discovery due to this situation. Mr. Smilow finally succumbed to a severe and permanently crippling heart attack, forcing him to quite his law practice thereby reducing the plaintiffs to zero legal counsel. Mr. Wiess was unanimously terminated by all clients, for gross negligence and incompetence thereby stalling the case longer. All plaintiffs were stranded for over 2 months until another counsel was secured and because he accepted the case late in terms of actually deciding to take the case, little time was left for quality representation in terms of full discovery. Due process was also jeopardized by these negative circumstances because plaintiffs had absolutely no control over them. Finally Local 831 Union was grossly negligent for these reasons: 1. There was no permanent assigned agent to the billboard painters of Gannett.

2. The union manager lied in his deposition and had no experience in the billboard indoustry.
3. He was not a signpainter or artist.
4. He was suspected of collusion based on the fact that he assigned the Gannett assistant supervisor to negotiate the -

STATEMENT OF THE CASE CONTINUED

contract, and that he relied upon the shop steward who also was given the authority of substituting for Lopez, the supervisor of all the billboard artists. The painters were enraged that Martinez the shop steward was given the authority to substitute as plant supervisor, they wanted a recall vote. The union manager sided with the shop steward. The shop steward managed to be included into the "Good Ole Boys Club"(mostly mexican).

5. Grant Mitchel the union manager allowed those that were immune to lay-off to vote against those union members who had none, for ratification of the contract.

6. The union manager completely divorced himself in terms of any kind of assistance to those who were laid-off.

DEPOSITION OF THE STUDIO MANAGER

The acting paint studio manager, Allen Rossi was deposed and much of his deposition had to be challenged in terms of lies; all plaintiffs agree to the falsifications planted in his deposition. His career was at stake thusly he had to falsify many questions presented to him, or he would be fired by Gannett, results like this require a trial and complete discovery.

A. Mr. Rossi acted as art director in actuality the previous art director would not allow him to paint anything with real tecqnicalitys to it. Most of the painters were even more skilled than he. Yet, he was to determine skill and ability under Addendum A of the new contract.

STATEMENT OF THE CASE CONTINUED

A basic picture of the many issues have been presented to the Honorable Court for its review with this Statement of the Case.

ARGUMENT

THE PLAINTIFF, AND OR INDIVIDUAL CANNOT BE DENIED FULL AND COMPLETE LEGAL REPRESENTATION IN ACCORDANCE TO THE LAWS OF THE LAND, WHETHER THEY BE CIVIL OR CRIMINAL IN NATURE, AND THAT THE CODES OF CIVIL PROCEDURE AND THE AMENDMENTS TOTHE CONSTITUTION ARE WRITTEN FOR ALL AND NOT FOR A SELECT PARTY TO THEIR SUPREME ADVANTAGE, BUT ALSO FOR THE INDIVIDUAL WHO THROUGH NO FAULT OF HIS OWN WAS DENIED FULL AND PROPER REPRESENTATION BY COUNSEL, EITHER BY MONETARY DEFICIENCY OR BY A SEQUENCE OF EVENTS UNCONTROLLED BY THE INDIVIDUAL, AND THAT RACIAL PREFERENCES VIOLATE THE CIVIL RIGHTS ACT OF 1964.

A. **The Gannett management and the Union committed. fraud in its lay-off of the 9 employees.**

B. **The Statement of the Case will qualify for prima facie evidence to prove such, upon full discovery and trial.**

C. **Confidence in the decision of the Central District Court is limited.**

The 9th. Circuit Court stated in its Memorandum filed August 15, 1995, that it must consider all the evidence. Full discovery and trial could only have justified this point. Shin was initially laid-off according to Addendum A of the contract.

ARGUMENT CONTINUED

With full discovery and trial a genuine issue of fact will have surfaced in accordance Rule 56 (c) and (e) of the Fed. Rule of Civil Procedure. These rules were automatically violated by the gross negligence of Shins counsel and no counsel at all, as stated within the "Statement of the Case." The issue of Addendum A was to be included in Shins lay-off suit.

Confidence in the decision of the Central District Court is limited in that: 1. Gannett maintained political influence with the city government.

2. An ex-city councilman was the Gannett lobbyist in the state capitol of California.

3. Gannett promoted with its billboards free advertisements for the city and its officials, including ads for re-election.

4. The Chairman of the Board of Gannett was found guilty of a felony for Federal Antitrust violations and was only given weekend duties as a sentence were others would have been incarcerated.

5. Other freebies for city officials were provided such as trips and maintenance services to lobby their influence.

In view of these 5 facts, it may be likely that a decision to favor Gannett in a summary judgment decision by a judge of the court of the City of Los Angeles, may have occurred and as

ARGUMENT CONTINUED

plaintiff in a suit against Gannett Shin cannot have the confidence of the Central District Court decision.

In rule 26 b (1) (a) (ii) of the Fed. Rules of Civil Procedure states: the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought, not so in shins case.

It is Shins understanding that racial preferential treatment was given to those employees retained in his job category- Outside Painter. In the Civil Rights Act of 1964 Section 703, 42 U.S.C. 2000e-2 (m) An unlawful employment practice is established when the complaining party demonstrates that race was a motivating factor in the employment practice.
(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of race. § 2000-e2.(2) to limit, segregate, or classify his employees or applicants for employment opportunities or otherwise adversely affect his status as an employee.

Questions on skill and ability, seniority, work production company records and fraud can truly be answered in a court of law, with testimony by actual witnesses under oath at trial.

ARGUMENT CONTINUED

Combining the decisions of both the 9th Circuit Court of Appeals, San Francisco California and the Central District Court of Los Angeles California these decisions violated Shins right to trial.

A. Amendment VII of the United States Constitution States: The right of trial by jury shall be preserved.

B. Amendment XIV of the United States Constitution States: Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection under the laws. Both Court decisions denied Shin equal protection under the law and trial by Jury in that testimony from witnesses who held critical facts in his favor; were never deposed. In their decisions, the 9th. Circuit and Central District Court extinguished Shins opportunity to expose testimony that would in addition to a civil case, create a substantial criminal case.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

The case raises an important question, for it would represent a dangerous incursion for the rights of the common person to seek and receive proper justice in their case.

A. The decision of the Ninth Circuit Court of Appeals of California, failed to establish and comprehend the true essence of the case, and that the real and factual issues were totally blotted out through gross incompetence, negligence and discovery by plaintiffs counsel for which plaintiff Shin had no control of.

B. For the reasons set forth in the Statement of the Case-grossly inadequate representation and a time without counsel.

C. The issues presented violate the Amendment rights of the Petitioner- Amendments, VII, and XIV of the United States Constitution.

Including: Federal Rule of Civil Procedure 26 (b) (1) (a) (ii) 28 USCA, Rule 56 (c). And, (e) of the Federal Rules of Civil Procedure and Section 703 of the 1964 Civil Rights Act (42 U.S.C. 2000e-2) (2) (j).

IN CONCLUSION

For the sum of the issues presented herein, it is respectfully requested that the Petition be granted and the Honorable Court review this matter.

Dated this 12 day of January, 1996

Respectfully Submitted,

By: Chong Yong Shin
SHIN CHONG YONG:
In Propria Persona

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APPENDIX

TAB	DOCUMENT	
A	Memorandum of the Ninth Circuit Court of Appeals entered on August 15, 1995	A-1
B	Order Granting Summary Judgment and the Judgment of the Central District Court entered June 14, 1993.	B-12
C	Relevant Statutes, including Amendments, VII, and XIV to the Constitution of the United States. Federal Rules of Civil Procedure 56 (c) USCA Federal Rules of Civil Procedure 56 (e) and 26 (b) (1) (a) (ii) 28 USCA Section 703 of the Civil Rights Act of 1964 (42 U.S.C.A. 2000e-2) (2) (j). United States Supreme Court Rule 13.5	C-36